Doc Code: AP.PRE.REQ

MAR 2 9 2007

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)
BUFFALO 201

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]	Application Number	Filed
	09/579,370	5/26/2000

on ___March 26, 2007___

Signature ___

Typed or printed name Steven M. Hoffberg	First Named Inventor
	David Friedman

Art Unit	Examiner
2666	Shick C. Hom

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
    Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.

☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

☒ attorney or agent of record.   33,511
Registration number ___

☐ attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34 ___

Signature ___

Steven M. Hoffberg
Typed or printed name

(914) 949-3100
Telephone number

March 26, 2007
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below*.

☐ *Total of ___ forms are submitted.

BUFFALO 201
<u>IN THE UNITED STATES PATENT AND TRADEMARK OFFICE</u>

Applicants   :   Friedman et al.

Serial No.   :   09/579,370

Filed   :   May 26, 2000

For   :   VOICE OVER INTERNET CALL CENTER INTEGRATION

Examiner   :   Shick C. Hom

Art Unit   :   2666

                                                                March 26, 2007

Commissioner for Patents
      P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

<u>PREAPPEAL CONFERENCE SUBMISSION</u>

Claims 6, 8-9, 11-14, 16 and 18-35 are in the application.

Claims 6, 9, 11, 16, 18, 24-31 and 33-35 are rejected under 35 U.S.C. § 102(e) as being anticipated by Shafiee et al. (US 6,771,766). Shafiee et al. discloses an Internet browser system which supports voice-over-IP (VOIP) capability using the H.323 protocol using client terminal codec software which runs on general purpose computers to communicate with agents. The Internet system employs shopping cart technology, and a conference over the Internet between a customer and a callcenter agent can be initiated based on a user adding an item to a shopping cart. See Abstract. Claim 6 requires, inter alia that "said server executing an application program communicating with telephony hardware to implement telephony system control, said application program having an application programming interface, said application program interface functions comprising at least one call to an external program, wherein said server proactively transmits a message to the Internet browser based on an automated analysis of a status of a user's Internet shopping cart, representing items of interest having an unconcluded transaction status, requesting establishment of an interactive voice communication session, and wherein the user can allow initiation of the interactive voice communication session through the Internet browser, in accordance with a predefined set of user preferences defining a user's

preferred communications mode, selected from the group consisting of voice over a data packet switched network and a public switched telephone network, and wherein the user's selected items of interest in the shopping cart are independent of the establishment of the interactive voice communication session."

The examiner states that support is found for the disclosure of the "external program" by Shafiee et al. on Col. 9, lines 7-16, which states:

> One or more of the pages provided by the site server 120 to the customer terminal may include an application program interface (or "API") for invoking the establishment of a call to a live agent. Using the API, web pages call embedded "talk to agent" buttons or active links. The API may be a URL with active parameters. The method then continues at decision branch point 520. Referring back to decision branch point 510, if a request for content is not received, the method continues directly to decision branch point 520.

The cited passage, however, does not teach or suggest the presently claimed architecture. For example, the present claim 6 requires that the same server transmit a message to the internet browser based on an automated analysis of the status of the user's Internet shopping cart, and execute an application program communicating with telephony hardware to implement telephony system control. In contrast, Shafiee et al. provide two separate servers, one for controlling the Internet shopping cart (web site server 120, see Col. 16, lines 33-64), and the other for controlling voice communications (Multimedia call center server 150, including web request processor 159 etc., see Col. 16, line 65-Col 18, line 37.) Figure 1 of Shafiee et al. shows (and the text confirms, see e.g., Col. 4, line 57-Col. 6, liner 37) that the Web Site Server 120 is a distinct hardware device, separated by a LAN, from the Web Request Processor 159, which is part of the Multimedia Call Center Server 150. See Col. 16, line 30-Col. 17, line 43. Thus, it is respectfully submitted that Shafiee et al. disclose a distinctly different architecture than that required by the present claims, which require that the "server proactively transmit[] a message to the Internet browser based on an automated analysis of a status of a user's Internet shopping cart, representing items of interest having an unconcluded transaction status, requesting establishment of an interactive voice communication session" and "said server executing an application program communicating with telephony hardware to implement telephony system control".

The present claims also require that "said server executing an application program communicating with telephony hardware to implement telephony system control, said application program having an application programming interface, said application program

interface functions comprising at least one call to an external program". In fact, there is no disclosure of an application communicating with telephony hardware which calls an external program.

It is further not believed, in contrast to the Examiner's assertion, that Shafiee et al. discloses "a predefined set of user preferences defining a user's preferred communications mode, selected from the group consisting of voice over a data packet switched network and a public switched telephone network". In fact, since the basic embodiment of Shafiee et al. is a kiosk 140, typically the user is not asked to input preferences, and only a single modality of communication is supported. In another embodiment, a user terminal 110 is provided, but there is no disclosure of any such "predefined set of user preferences".

The Examiner's conclusion that just because the prior art discloses the use of Microsoft Windows operating system, which as known makes use of dynamic link libraries (Col. 17, lines 10-43), that the external program in accordance with the present claims is in fact is a dynamic link library is completely unsupported. Further, note that this cited passage refers only to the user terminal (Col. 17, line 17), and not to the server (which runs UNIX or Solaris 7), which is referred to in the present claims.

Claims 29 and 35 focus on the telephone server, and not the web server functions of the system. To that extent, the relevant parts of Shafiee et al. corresponding to the present claims (if at all) are generally all within the multimedia call center server 150. Shafiee et al. do not, however, disclose <u>any</u> telephony hardware, and therefore is devoid of relevant disclosure of the particular architecture claimed. This telephony hardware component of the present invention is replaced, for example, by software running on generic user terminal computers, such as NetMeeting on Microsoft Windows.

Claims 8, 12-14, and 19-23 are rejected under 35 U.S.C. § 103(a) as being obvious over Shafiee et al. in view of Petty et al. Each of these references has been distinguished. However, further discussion may be useful. Since the communication system of Shafiee et al. employs NetMeeting, which supports peer-to-peer communications (especially in a non-conference mode) over the Internet, it is not at all clear that any charges or billings for such communications are obvious, especially if the communication is intended to assist in sales support and thus such charges would likely discourage purchases. There is no particular teaching or motivation (in the references or otherwise) how or why to combine Petty et al. with Shafiee et al., and the result of

any such combination is anything but clear. What deficiency of Shafiee et al. is the person of ordinary skill in the art trying to remediate? As discussed above, it is not at all obvious to use a PSTN-type telephone billing system for a peer-to-peer (and fundamentally free) communication, between a user seeking to purchase goods (i.e., using a shopping cart) with a call center agent who would normally not wish to disincentivize a caller from contacting the call center and closing the sale. Likewise, the system according to Shafiee et al. does not suggest any payments to be made by the proprietor of the system, since the Internet communications are typically not metered, and the proprietor either provides the kiosk for use, or permits a user to employ its own computer. Reconsideration is respectfully requested.

It is respectfully submitted that the term "micropayment" has acquired a separate meaning in the art (indeed, the Examiner rejected to the references in the specification which provide such interpretation), and that Petty et al. do not teach any such micropayment, but rather a traditional PSTN-type telephone billing system.

Applicants have previously discussed the analogy of an "external program" in Petty et al., and believe that the distinction remains valid. For example, Petty et al. is distinguished in that the calls to the external program in claims 6 and 19 are from the web server (in contrast to Petty et al. which appears to disclose communications with separate servers). Further, claim 19 specifies that a plurality of the external programs are simultaneously executing, a feature which does not appear to have analogy in Petty et al. (Applicants respectfully dispute the alleged disclosure of Fig. 9A and text describing this figure). It is noted that the present claims define a "Server" which hosts both a web site and the application program, which is distinct from an architecture defining a web server communicating with a computer telephone server as disclosed in Petty et al.

Respectfully Submitted,

Steven M. Hoffberg
Reg. No. 33,511

MILDE & HOFFBERG LLP
10 Bank Street – Suite 460
White Plains, NY 10606
(914) 949-3100